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No. ~~12193~~

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

HERBERT A. HOWARD,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF OF APPELLEE.

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BRIEF OF APPELLEE.

Jurisdictional Statement.

Appellant was indicted on March 8, 1950, and was subsequently convicted of two counts of that indictment charging violations as follows: Count 22, a violation of 12 United States Code 1467, and Count 24, charging a violation of 18 United States Code 1006 [R.[1] 13 and 15].

The District Court had jurisdiction of the cause under 18 United States Code 3231. The offenses charged were committed in Los Angeles County, California, within the Central Division of the Southern District of California.[2]

Judgment was entered on November 17, 1950 [R. 95-96], Notice of Appeal was filed on November 22, 1950 [R. 97, 98]. This Court has jurisdiction of the appeal under Section 1291 of Title 28 of the United States Code.

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[1]References preceded by the letter "R." are to the typewritten transcript of record; those by an "A. B." to Appellant's Opening Brief.

[2]The indictment so charged [R. 13 and 15]. The evidence supported it. No attack is made on the grounds of lack of jurisdiction or venue.

Statement of the Case.

On March 8, 1950, the Federal Grand Jury at Los Angeles returned an indictment against the appellant in twenty-four counts, which was filed that day in the United States District Court for the Southern District of California, Central Division [R. 16].

On April 17, 1950, appellant pleaded not guilty to all counts [R. 24]. Trial was commenced before a jury on October 17, 1950 [R. 113]. In the course of the trial the government dismissed four counts. On November 9, 1950, the jury found the appellant not guilty of eighteen of the remaining counts and guilty of Counts 22 and 24 [R. 85]. Appellant's motions to dismiss the indictment and for judgment of acquittal on Counts 22 and 24 of the indictment, or in the alternative for a new trial [R. 87-92], and for arrest of judgment [R. 93] were denied [R. 93]. On November 17, 1950, appellant was sentenced to pay a fine of $2,500.00 on Count 22 of the indictment and to pay a fine of $2,500.00 on Count 24 of the indictment [R. 95-96]. Notice of Appeal was filed on November 22, 1950 [R. 97-98].

Counts 22 and 24 of the indictment charge violations of 12 United States Code 1467 and 18 United States Code 1006, respectively as follows:

"Count Twenty-two

(U. S. C., Title 12, Sec. 1467)

At the time hereinafter mentioned, the Broadway Federal Savings and Loan Association of Los An-

geles was organized under, and was in possession of a charter issued pursuant to, the Home Owners' Loan Act of 1933;

On or about June 30, 1947, in Los Angeles County, California, within the Central Division of the Southern District of California, defendant HERBERT A. HOWARD, being an officer and employee, namely: president of said association, with intent to deceive the Home Owners' Loan Corporation and the Federal Home Loan Bank Board, its auditors and examiners, did make and cause to be made a false entry in a report to the Federal Home Loan Bank Board, namely: the regular monthly report for the month ending June 30, 1947, said entry being reflected in said report in the left-hand column under the caption 'ASSETS AND CURRENT EXPENSE' as follows: '1. First mortgage loans: a. Direct reduction loans,' and is in the amount of '$339,752.48,' which said sum is over-stated in the sum of $8500.00.

COUNT TWENTY-FOUR

(U. S. C., Title 18, Sec. 1006)

At the time hereinafter mentioned, the Broadway Federal Savings and Loan Association of Los Angeles was organized under, and was in possession of a charter issued pursuant to, the Home Owners' Loan Act of 1933;

On or about March 22, 1949, in Los Angeles County, California, within the Central Division of the Southern District of California, defendant HERBERT A. HOWARD, being an officer and employee,

namely: president of said association, with intent to deceive the Home Owners' Loan Corporation and the Federal Home Loan Bank Board, its auditors and examiners, did make and cause to be made a false entry in a report to the Federal Home Loan Bank Board, namely: an affidavit of the president of said association attached to the report of examination of said association as at the close of business March 8, 1949, which said affidavit is false in that it alleges that all of the assets recorded on the association's books are in full force and effect and that the signatures appearing thereon are genuine, whereas in truth and in fact, there were recorded on the records of said association the following notes bearing the signature of one Colleen B. Williams and one Vashti Peake:

'Loan #287—Colleen B. Williams

'Loan #274—Vashti Peake,

and said signatures were false and forged as the defendant then knew."

It is noted that 18 United States Code 1006 is in part based upon 12 United States Code 1467 and superseded that section as of September 1, 1948. Reviser's Notes, 18 United States Code 1006; Section 20, Act of June 25, 1948, 62 Stat. 862. Thus the two counts charge similar violations except as to the date and the nature of the false entry.

ARGUMENT.

Appellant's brief is divided into attacks on convictions under Count 22 and Count 24, respectively. Appellee's brief will deal with each of appellant's arguments in the order in which they were advanced.

ARGUMENT ON COUNT TWENTY-TWO.

(1) The Court Properly Denied Appellant's Motion for a Judgment of Acquittal on the Ground That Exhibit 22-X Was Not Transmitted or Made to the Federal Home Loan Bank Board.

Exhibit 22-X is the monthly report to the Board of Directors of the Broadway Federal Savings and Loan Association of Los Angeles, California, for the month ended June 30, 1947. Such reports are required by the regulations governing Federal Savings and Loan Associations, one copy going to the Federal Home Loan Bank and two copies to the Federal Home Loan Bank System in Washington. (24 C. F. R. 143.5 (Appendix, p. 9).)

The evidence shows this report was produced in Court by Frank C. Noon [R. 241], who was "Manager of the Los Angeles Branch of the Federal Home Loan Bank of San Francisco and Supervisory Agent for the Federal Home Loan Bank Board" [R. 240]. Noon testified that in his capacity with the Federal Home Loan Bank he received monthly reports from the Federal Savings & Loan Associations, which reports were a part of the official records of his office and that he had with him the monthly report of the Broadway Federal Savings and Loan Association of Los Angeles, California, for June 30, 1947 [R. 241]. The exhibit was then marked for identification as Government's Exhibit No. 22-X [R.

244]. He further identified the particular sheet as being the one sent to Washington [R. 245].

During cross-examination of Mr. Noon [R. 269] appellant's attorney, Rose, picked up the exhibit and the following interrogation ensued [R. 269-270]:

> "Mr. Rose: May I have the other exhibit that Mr. Noon brought in? Oh, it is over here.
>
> Q. Did you receive this in the regular mail at your office? A. Yes, from the Chief Supervisor.
>
> Q. Where is he located? San Francisco? A. Washington.
>
> Q. That is something else that came from Washington, and you don't know anything about it, otherwise? A. Not this paper, no.
>
> Q. I am talking about that paper. A. No.
>
> Q. Is this a copy of the regular monthly report of the board of directors of the Federal Savings and Loan Associations of Los Angeles that, to your knowledge, was made out monthly by some officer of the Association? A. Yes, I don't know. This appears to be the original. The directors may have had copies.
>
> Q. That is the usual form supplied by the Home Loan Bank Board, is that right? A. That's right.
>
> Q. I think it has some notation in the corner. A. Yes.
>
> Q. 'Form FMR, Office of the Government, FHLB, System,' is that right? A. Yes."

During the interrogation which followed [R. 270-273] the witness was questioned concerning the various entries which appeared upon Exhibit 22-X and clearly established that it is the monthly report of the Broadway Federal Savings and Loan Association of Los Angeles

for the month ending June 30, 1947, and one of the reports that is, by regulation, required to be made to the Federal Home Loan Bank System in Washington, D.C.

Mildred P. Wilson, who was Assistant Secretary of the Broadway Federal Savings and Loan Association at the time of the report in question [R. 274], identified the exhibit as being one which she prepared under the express instructions of the appellant, Mr. Howard [R. 275-277]. She then testified, ". . . after the report was completed then it also had to go to Mr. Howard's desk, then, after he read it and approved it, then he gave it to me to send down to the Home Loan Bank, and that was what was done" [R. 278].

After a great deal of additional testimony as to the manner in which the report was prepared and the manner in which the accounts reflected by the report were maintained at the Broadway Federal Savings and Loan Association the exhibit, as Government's Exhibit 22-X, was finally received in evidence [R. 345].

An examination of the exhibit itself reveals that it is one of the forms used by the Federal Home Loan Bank System. Mr. Noon's testimony bore this out [R. 270]. Mailing instructions on the reverse side of the exhibit read as follows:

> "Mailing Instructions
>
> Association should retain original; send one copy to Federal Home Loan Bank of which a member, and two copies to Chief Supervisor, Federal Home Loan Bank System, Washington 25, D.C."

The regulation set forth at 24 C. F. R. 143.5 (Appendix, p. 9) provides that these reports should be made; that one copy should be forwarded to the Federal Home Loan

Bank of which the association is a member, and that two copies should go to the Governor of the Federal Home Loan Bank System in Washington, D.C. The regulation as to supervision of Savings and Loan Associations (Appendix, p. 10), set forth at 24 C. F. R., 1943 Supp., 6.2, 8 F. R. 9865, provides that the Chief Supervisor shall be responsible under the Governor of the Federal Home Loan Bank System for supervision of all member institutions.

From the files of the Broadway Federal Savings and Loan Association appellant produced that association's copies of the monthly reports to the Board of Directors for the first six months of operations, from January 31, 1947, to and including June 30, 1947 [R. 373]. These reports were kept and prepared in the due course of business [R. 373]. They were received in evidence as Defendant's Exhibit E5-22 [R. 373] and later designated as a part of the record on this appeal [R. 107]. From these reports it was apparent that it was the practice at the Broadway Federal Savings and Loan Association, during early 1947 at least, to list all loans as Direct Reduction Loans [R. 373-374]. All of these reports were signed by Mildred P. Wilson [R. 375]. On direct examination appellant identified these reports as the regular monthly reports to the directors of the Broadway Federal Savings and Loan Association [R. 378-379] and testified that the forms for the reports came from the Home Loan Bank [R. 376] and that they were typed up by Mildred P. Wilson [R. 380]. Appellant then testified that in November, 1947, the Home Loan Bank *Board* notified his association that they had made an error in compiling the monthly report "to the Home Loan Bank *Board*" because of the manner in which they lumped all loans

together as "Direct Reduction Loans" [R. 388]. In this connection it is pointed out that the appellee is not here concerned with the manner in which these reports were made, that is, not concerned with bookkeeping procedures, but only with the fact that the entries were false and that they were made to the Home Loan Bank Board.

When one considers the above facts, together with the fact that the Federal Home Loan Banks are agents of the Federal Home Loan Bank Administration for supervisory purposes (Regulations—ORGANIZATION OF THE BANKS, Appendix, p. 7), it is apparent that Government's Exhibit 22-X was in truth a report to the Federal Home Loan Bank Board as described in the indictment [R. 13-14].

(2) The Court Properly Denied Appellant's Motion for Judgment of Acquittal on the Ground That There Was No Evidence to Show the Appellant's Intent to Deceive the Home Owners' Loan Corporation or the Federal Home Loan Bank Board, Its Auditors and Examiners.

In connection with this argument it is interesting to note that at page 4 of his Opening Brief the appellant admits to the falsity of the entry reflected in Government's Exhibit 22-X.

Mildred P. Wilson testified that the report was prepared under the appellant's instructions [R. 275-277] and that the appellant saw this particular report and approved it before it was sent out [R. 278]. She further testified [R. 283],

> "Mr. Howard said that we were going to make loans, collateral loans on certificates already held by

certain persons in the association. After that he was going to open a savings account for each of these persons, thereby setting up a new . . . thereby setting up a loan, an additional loan for the association, and also an additional share account. After the statement went to the Home Loan Bank, we would cancel these loans, and that was all there was to it."

Mrs. Wilson later testified [R. 341] that she had a conversation with the appellant relative to listing collateral loans on Exhibit 22-X, and that appellant said that he wanted all loans grouped under one heading, "Direct Reduction Loans," and that [R. 342] appellant said that, "We were going to set these collateral loans up and after the report was sent in to the Federal Home Loan Bank, we would cancel them off."

The appellant failed to deny any of the above testimony of Mildred P. Wilson, when he later testified in his own behalf at the trial.

There was a great deal of testimony establishing that at least two of the loans listed on the books of the Broadway Federal Savings and Loan Association on June 30, 1947, were false and fraudulent and were based upon forged share loans on the certificates of John M. Anderson and his wife, Mary C. Anderson. The two false and fraudulent loans totalled $8,500.00 [R. 208-240] and were included in the total of loans reflected in Exhibit 22-X, the monthly report of June 30, 1947, to the board of directors and the Federal Home Loan Bank Board,

and tended to "water" that report by a corresponding amount.

Appellant presented this report to the Board of Directors of the Broadway Federal Savings and Loan Association at a meeting held on July 11, 1947 [R. 383]; the report presented was Exhibit 22-X [R. 384] and reflected total assets as of June 30, 1947, at $372,156.56 [R. 384 and R. 386]. This is the same figure appearing on Exhibit 22-X. Appellant referred with pride to this figure [R. 386] and informed the Board of Directors that *the total loan value at that time* amounted to approximately $360,000.00 [R. 386]. He then pointed out the number of Investment Share Accounts and *the number of loan accounts* [R. 386].

Appellant testified that he first saw the collateral loan cards and re-purchase slips pertaining to the two fraudulent loans in July of 1947 [R. 391] when they were brought to his attention by his auditor, Mr. Bonnet, and that he was told that this practice was usual among savings and loan associations in the first period of their operation when they usually inflate their assets [R. 392, 410]. There were several other such loans on the books on June 30, 1947, in addition to the two forming the basis of Count 22 [R. 392, 418]. Appellant fixes his conversation with Mr. Bonnet at between the 1st and the 14th day of July [R. 409]. He admits having signed the checks used in paying off the "loans" [R. 390]. It was established that the two fraudulent loans in question were cancelled on July 14, 1947 [R. 415], three days after the

meeting in which he informed the Board of Directors of the number of loans that had been made to that date by the association [R. 387].

The testimony of appellant when cross-examined in this regard is enlightening [R. 416-419]:

"By Mr. Danielson: Mr. Howard, you were with the Broadway for 32 months. You are familiar with what collateral loans are. They are collateral loans secured by shares? A. That is correct.

Q. Those are the ones you can loan up to 90 per cent? A. Yes, sir.

Q. You have gone over these John and Mary Anderson transactions right here in court? A. Yes. I listened to that.

Q. And you examined them together with your counsel here yesterday, didn't you? A. Not much. Very little.

Q. To refresh your recollection then, as to the John Anderson account, he had an account of $5,000 in the Broadway, didn't he? A. Yes, sir.

Q. And on or about June 28, 1947, a collateral loan was opened up in the amount of $4,500 on it, wasn't it? A. It would appear that way, yes.

Q. And on the same date, June 28, at least, a new investment share ledger in the same amount, $4,500, was opened up, wasn't it? A. That is correct.

Q. As to Mary Anderson's account, she had account 20 in the amount of $5,000, didn't she? A. That is correct.

Q. And on June 27, 1947, a collateral loan of $4,000 was placed on that account, wasn't it? A. That is correct.

Q. On the same date, June 27, 1947, a new investment share ledger in the amount of $4,000 was put in that account? A. It appears that way.

Q. And it was cancelled off on July 14. A. That is right.

Q. There was no interest collected on that account was there? A. None, according to my knowledge. The board of directors will reflect that, also, in the minutes.

Q. As to John Anderson, there was no interest collected on that, either? A. None.

Q. These loans were on June 27 and June 28, 1947. I direct your attention to Government's Exhibit 22-Y, the ledger sheet, 1210. Prior to June 27, there had been five collateral loans granted at the Broadway, is that not correct? (The entries on Exhibit 22-Y were made by Mildred Wilson and reflect the collateral loans set up in the latter part of June, 1947, which were later cancelled off during July, 1947—R. 341 to 343.) A. I don't know.

Q. Will you count them? A. I saw three.

Q. Well, prior to June 27, there had been five. A. Yes.

Q. With a total balance of $1,900. A. Yes.

Q. On June 27th and 28th, these two days, we have a ten collateral loan set-up. A. That is correct.

Q. And the total balance then was $25,800. A. It appears that way.

Q. Then on July 10, we had—well, between July 10th and 30th, we had six of them removed, is that not correct, or credited? A. It appears that way.

Q. Leaving a balance of $1,320. A. That is correct.

Q. So only on June 30, 1947, that was the only time you had a balance of $25,800? A. It appears that way.

Q. As of January 11, 1949—well, we can go further. As of the end of 1949, after three years of operation, there were $38,017.07, is that correct? A. That is correct.

Q. And on this check No. 417, Mary Anderson, $4,000, that is your signature as one of the signers, is it not? A. Yes, sir. It required two signatures.

Q. And on this check 416? A. That's right.

Q. That is your signature as one of the signers? A. Yes.

Q. That is to John Anderson? A. Yes, that's right."

It is fundamental that the law presumes a person to intend to do what he actually does; that he intends the natural and necessary consequences of his voluntary act. (*Haugen v. U. S.* (9 Cir., 1946), 153 F. 2d 850; *U. S. v. Randall* (7 Cir., 1947), 164 F. 2d 284.) Here the appellant inflated the assets of the Broadway Federal

Savings and Loan Association by placing on the books false and fraudulent loans. He thereby caused the monthly report of the association to be inflated in the amount of the loans and, since that report, by regulation, was a report which must be forwarded to the Federal Home Loan Bank Board the effect of his act was to deceive that Board and its auditors and examiners.

Appellee submits that the admittedly false report, Exhibit 22-X, prepared under the appellant's supervision, was intended to deceive whatever person or agency should receive it; that is, those to or for whose benefit or information it was prepared and to whom it was transmitted. The evidence established that this exhibit was transmitted to the Federal Home Loan Bank System, as well as the local Federal Home Loan Bank. In view of the evidence, the jury was justified in finding that the requisite intent accompanied the act.

(3) The Court Properly Denied Appellant's Motion for Judgment of Acquittal on the Ground That the Federal Home Loan Bank Board Was Not in Existence on June 30, 1947.

Appellant argues that as the result of Executive Order No. 9070, effective February 24, 1942 (Appendix, p. 6), the Federal Home Loan Bank Board was not in existence on the date of the offense charged in Count 22 of the indictment, June 30, 1947, and that, therefore, he could not be guilty of the offense charged in that count of the indictment.

Executive Order No. 9070 was issued pursuant to the First War Powers Act, 1941 (Appendix, p. 3), Section 5 of which provides in part:

> "That all laws, or parts of laws, conflicting with the provisions of this title are to the extent of such conflict *suspended* while this title is in force." (Emphasis added.)

The section goes on to provide that on the termination of that title all government agencies, etc., . . .

> "shall exercise the same functions, duties, and powers as heretofore, or as hereafter, by law may be provided, any authorization of the president under this title to the contrary notwithstanding."

Section 3 of Executive Order No. 9070 provided that the chairman of the Federal Home Loan Bank Board should serve as the Federal Home Loan Bank Commissioner. Thus, it is apparent that Executive Order No. 9070 merely transferred the functions of the Federal Home Loan Bank Board to the National Housing Agency, and that the Board was still in existence on June 30, 1947.

Reorganization Plan No. 3 of 1947 (Appendix, p. 4) (A. B. 37) effective July 27, 1947, transfers the functions, *et cetera,* of the "Federal Home Loan Bank Board" to its successor agency. It is obvious that this transfer could not be accomplished if the Board did not exist at that time. This transfer took place nearly a month after the date alleged in Count 22. Appellant was aware of these facts and of the effective date of the reorganization plan (A. B. 19). It is submitted that his argument in this regard is frivolous.

ARGUMENT ON COUNT TWENTY-FOUR.

Appellant's first specification of errors under Count 24 is in two parts, First, that the making of a false entry in a report to the Federal Home Loan Bank Board is not a crime under 18 U. S. C. 1006, and, Second, that the Federal Home Loan Bank Board was not in existence on March 22, 1949.

1(a) The Making of a False Entry in a Report to the Federal Home Loan Bank Board Is Made an Offense by 18 U. S. C. 1006.

A careful reading of that portion of 18 U. S. C. 1006 which is pertinent to this case reveals that the section can properly be divided into three parts.

The first part defines the class of person who can commit the act made criminal. The listing of various governmental agencies serves only to modify the pronoun "whoever". This portion is as follows:

PART 1.

> *"Whoever, being an officer, agent or employee of or connected in any capacity with* the Reconstruction Finance Corporation, Federal Deposit Insurance Corporation, Home Owners' Loan Corporation, Farm Credit Administration, Federal Housing Administration, Federal Farm Mortgage Corporation, Federal Crop Insurance Corporation, Farmers' Home Corporation, the Secretary of Agriculture acting through the Farmers' Home Administration, or *any* land bank, intermediate credit bank, bank for cooperatives or any lending, mortgage, insurance, credit or *savings and loan corporation or association authorized or acting under the laws of the United States,* . . ." (Emphasis added.)

PART 2.

The second part of the Statute describes the intent which will make the act a crime, if such intent is coupled with such act. That part of the section is as follows:

> ". . . *with intent to defraud any such institution* or any other company, body politic or corporate, or any individual, *or to deceive any officer, auditor, examiner* or agent *of any such institution or of department or agency of the United States,* . . ." (Emphasis added.)

PART 3.

The third part of the section describes the act which is made unlawful by the statute. It reads as follows:

> ". . . makes any false entry in any book, report or statement of or to any such institution, . . ."

It is apparent that the purpose of the Statute is to make it unlawful for a particular class of person (Part 1), with intent to defraud or deceive a described class (Part 2), to make a false entry in a book, report, or statement to such institution (Part 3). The statute is designed to protect a certain class of persons (Part 2), from fraud or deceit by another class (Part 1), by means of false entries in reports to "such institutions" (Part 3). The persons to be protected are the persons who are the potential victims of the fraud and/or deceit. Since the particular class of fraud and/or deceit which is made unlawful is that flowing from a false entry in a report to "such institutions" the expression "such institutions" must refer to those who could be the objects of the fraud and/or deceit. In other

words, "such institutions," as contemplated by Part 3, must refer to the class defined in Part 2, as set forth above.

The Reviser's Notes to 18 U. S. C. 1006 state that the new section is based upon eleven sections of the old United States Code and that among these is 12 U. S. Code 1467(c). The Reviser's Notes go on to state:

> "Each revised section condenses and simplifies the constituent provisions without change of substance except as herein indicated.
>
> "The term 'or of any department or agency of the United States' was inserted in order to clarify the sweeping provisions against fraudulent acts and to eliminate any possible ambiguity as to scope of section. (See definitions of 'department' and 'agency' in section 6 of this title.)"

The new section was based in part upon the old 12 U. S. Code 1467(c) which made unlawful a false entry in a report to the Federal Home Loan Bank Board. The Reviser's Notes clearly point out that no change in substance was intended and in addition point out that the words "department or agency of the United States" were added "to clarify the sweeping provisions against fraudulent acts and to eliminate any possible ambiguity as to scope of section." If these notes have any significance it must be that the Federal Home Loan Bank Board is to be protected by the provisions of the new section. This court has held that the Reviser's Notes do have significance. *Kirk, et al. v. United States* (9 Cir., 1950), 185 F. 2d 185, 188.

1(b) An Indictment May State an Offense Against the United States Even Though It Refers to the Home Loan Bank Board as the Federal Home Loan Bank Board.

Appellant argues that Count 24 of the indictment fails to state an offense against the United States since the functions of the Federal Home Loan Bank Board were transferred to the Home Loan Bank Board by Reorganization Plan No. 3, 1947, effective July 27, 1947, nearly two years before the date of the offense charged in Count 24, March 22, 1949. His objection is to the use of the word "Federal" in the designation of the Board (A. B. 38.)

Actually, Section 9 of Reorganization Plan No. 3 (Appendix, p. 5), abolished the Federal Home Loan Bank Board, but not until all of its functions were transferred to the Home Loan Bank Board. (See Section 2 of the Reorganization Plan, Appendix, p. 5.) The Reorganization Plan was submitted by the President pursuant to the authority granted him by the Reorganization Act of 1945 (Appendix, p. 3). Section 9 of that act provides, in pertinent part:

> "Any statute enacted, . . . in respect of . . . any agency or function transferred to . . . any other agency or function under the provisions of this Act, before the effective date of such transfer, . . . shall, . . . have the same effect as if such transfer, . . . had not been made; . . ."

Thus it is apparent that the Congress did not intend that the reorganization brought about by this plan should have the effect attributed to it by the appellant, and that the Federal Home Loan Bank Board or Home Loan Bank

should no longer have the protection afforded to it by 12 U. S. Code 1467(c) or by its successor, 18 U. S. C. 1006.

Penal statutes should be strictly construed, but this does not mean that they should be given so narrow a meaning as to distort them or to nullify the evident meaning and purpose of the legislation. They should be given their fair meaning in accord with the evident intent of Congress. *U. S. v. Sullivan* (1948), 332 U. S. 689, 68 S. Ct. 331; *U. S. v. Brown* (1948), 333 U. S. 18, 25-26; *U. S. v. Monstad, et al.* (9 Cir., 1943), 134 F. 2d 986.

It is submitted that in common usage the term "Federal Home Loan Bank Board" is, even today, synonymous with "Home Loan Bank Board" and that the Appellant was not misled by the inclusion of the word "Federal" in the name of the board as it is set forth in the indictment. In this connection it is noted that the Reorganization Plan was effective July 27, 1947. Yet the regulations governing Federal Savings and Loan Associations were not revised to conform to these changes in nomenclature until seventeen months later, on December 17, 1948. See Resolution #1285, December 17, 1948, Appendix, p. 6, 13 F. R. 8266. Section 1014 of the new Title 18, U. S. Code, effective September 1, 1948, and amended May 24, 1949, *still carries the full designation, "Federal Home Loan Bank Board."* Frank C. Noon, who had been with the Home Loan Bank for eighteen years at the time of his testimony, testified that he was then "supervisory agent for the *Federal* Home Loan Bank Board." [R. 240.] (Emphasis added.)

The appellant cannot possibly have been misled by the inclusion of the word "Federal" in the name of the board. There could not have been any other board with a similar

name; the use of the word "Federal" or of the words "Federal Home Loan Bank" or a combination or variation of them with other words is prohibited by law. 12 U. S. Code 1441(d) and 18 U. S. C. 709. It is well settled that where the variance between the indictment and the proof could not possibly mislead the defendant such a variance is not material, *Meyers v. U. S.* (2 Cir., 1924), 3 F. 2d 379; *U. S. v. Rabinowitz* (1949), 176 F. 2d 732; *U. S. v. Rosenblum* (1949), 176 F. 2d 321, and that a variance between the indictment and the proof is immaterial unless the substantial rights of the accused have been prejudiced. A variance should not be regarded as material where the defendant could not have been misled at the trial or deprived of protection against another prosecution for the same offense. *Berger v. U. S.* (1935), 295 U. S. 78, 55 S. Ct. 629. The error in adding the word "Federal" to the title of the Home Loan Bank Board would, therefore, be harmless error within the meaning of Rule 52(a) of the Federal Rules of Criminal Procedure, and should be disregarded. That rule reads:

> (a) Harmless Error. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."

See also:

Himmelfarb v. U. S. (9 Cir., 1949), 175 F. 2d 924, 936;

U. S. v. Schwartz et al. (2 Cir., 1945), 150 F. 2d 628, cert. den. 326 U. S. 757;

Cummings v. U. S. (5 Cir., 1942), 131 F. 2d 107.

2. Exhibit 24-B Was Properly Admitted Into Evidence.

At the outset it is pointed out that in his brief Appellant has based his argument on the fundamental misconception that Count 24 charges Appellant with making an entire false report to the Federal Home Loan Bank Board (A. B. 41, 42). Actually, the indictment describes the false entry as ". . . namely: an affidavit of the president of said association attached to the report of examination of said association . . ." The pertinent portions of Count 24 read: *"On or about March 22, 1949, . . .* Herbert A. Howard . . . with intent to deceive the Home Owner's Loan Corporation and the Federal Home Loan Bank Board, its auditors and examiners, *did make and cause to be made a false entry in* a report to the Federal Home Loan Bank Board, *namely, an affidavit of the president of said association attached to the report of examination of said association as at the close of business March 8, 1949,* which said affidavit is false in that it alleges that all of the assets recorded on the association's books . . . and that the signatures appearing thereon are genuine, whereas in truth and in fact there were recorded . . . the following notes bearing the signature of . . . one Vashti Peake: . . . Loan #274—Vashti Peake, and said signatures were false and forged . . ."

The testimony of Frank C. Noon, at the time he produced Exhibit 22-B, is set forth at pages 254-255 of the transcript of record on appeal and at pages 22 and 23 of

Appellants' Opening Brief. Mr. Noon was "manager of the Los Angeles branch of the Federal Home Loan Bank of San Francisco and supervisory agent for the Federal Home Loan Bank Board" [R. 240]. He was asked whether he had the ". . . report of the Federal Savings and Loan Association's Examiner pertaining to the Broadway Federal Savings and Loan Association dated on or about March 22, 1949." The language used is very nearly identical to that used in Count 24 of the indictment. He replied, "I have a certificate of the examiner in charge and *the affidavit of the president* or secretary on the same sheet." He also testified that the affidavit was dated March 22, 1949, the identical date alleged in the indictment as the date when Appellant made or caused to be made the false entry. Before further questions could be asked the Court admitted the exhibit into evidence but immediately thereafter and before any additional testimony, it was established that the document was a part of the official records of Mr. Noon's office.

The testimony of Frank C. Noon clearly identified the affidavit as the affidavit described in Count 24 of the indictment, the falsity of which is the basis of that count. As such it was properly admitted into evidence. Any other circumstances showing knowledge or lack of knowledge of the document by the witness could go to the weight of the evidence but not to its admissibility.

Appellant later admitted that the signature on the affidavit, Exhibit 24-B, was his signature [R. 403] and that he signed it at the instance and request of Mr. Manley [R. 403-404, 419-420] (A. B. 23-24) and that he knew

Mr. Manley to be ". . . one of the examiners" [R. 419] and that Manley made an examination of the Broadway in 1949 and that ". . . He was there between two and three weeks" [R. 420]. There can be no doubt that Appellant was fully aware of what he was signing when he signed the affidavit in question.

3(a) The Court Did Not Err in Refusing to Give Defendant Instruction No. 3.

It is fundamental that a Court's instructions should be considered as a whole and that it is not error to refuse an instruction if that instruction is adequately covered by other instructions given or by the general charge.

Stein et al. v. U. S. (9 Cir., 1948), 166 F. 2d 851;
McCoy v. U. S. (9 Cir., 1948), 169 F. 2d 776, 785.

Defendant's requested instruction No. 3 relates to the manner in which the jury should judge the credibility of the witnesses. Appellant points out that it was intended to apply to the testimony of Mildred P. Wilson (A. B. 43). The Court gave instructions on credibility of witnesses which fully set forth the law as to the manner in which the jury should judge the credibility of the witnesses [R. 466, 471]. Furthermore [R. 468], the Court gave an instruction which is identical in substance and effect with defendant's instruction No. 3.

In addition, the requested instruction would, at most, apply only in the event the appellant had made an oral admission or oral confession which was used against him during the trial. The testimony which appellant considers as an admission [R. 339; A. B. 44-45] amounts to neither a confession nor admission. Therefore, there was no reason to give the requested instruction.

3(b) The Court Did Not Err in Refusing Defendant's Requested Instruction No. 62.

This requested instruction [R. 72-73; A. B. 47] sets forth what appellant considers to be one of the elements of the offense charged in Count 24 under 18 U. S. C., Section 1006. The Court gave an instruction on the elements of the offense charged in Count 24 [R. 454, 455] in which the jury was clearly instructed that, in order to be an offense, the defendant must make and cause to be made a false entry ". . . in a report *to* the Federal Home Loan Band Board . . ."

Inasmuch as the requested instruction was adequately covered by other instructions there was no error in the Court's refusal to give the instruction.

4(a) The Court Did Not Err in Giving the Instruction Relative to Presumptions Set Forth at Page 465 of the Transcript of Record.

As stated above a Court's instructions to the jury must be considered as a whole and each instruction is to be regarded in the light of all of the others. The instruction challenged by appellant defines a presumption and informs the jury that such presumption must be followed until overcome or outweighed by evidence to the contrary. The instruction which appellant holds out as the proper instruction under the circumstance covers a different field entirely. It does not define a presumption, but rather it describes the effect of the presumption of innocence. In addition to the instruction [R. 459, lines 12-20; A. B. 49] which appellant contends is correct, the Court gave additional instructions on the presumption

of innocence [R. 458, lines 18-26, and 460, line 25, to 461, line 3] which are even stronger than that set forth at page 459.

Appellant also argues that the challenged instruction is not good because it does not include *within itself* an instruction to the effect that a jury must be convinced beyond a reasonable doubt (A. B. 50). An examination of the Court's instructions reveal that they are replete with references to the doctrine of reasonable doubt [R. 459, 460, 461, 462, 463, 467, 468, 469, 470, 471, 472, 476, 477, 479].

4(b) The Court Did Not Err in Giving the Instruction on Proof Beyond a Reasonable Doubt Set Forth at Page 459 of the Transcript of Record.

If one considers the entire instruction rather than that portion set forth in appellant's brief, it becomes apparent that the Court properly defined "reasonable doubt." The entire instruction reads [R. 459-460]:

> "A reasonable doubt is a fair doubt based upon reason and common sense and arising from the state of the evidence. It is rarely possible to prove anything to an absolute certainty. Proof beyond a reasonable doubt is established if the evidence is such as you would be willing to rely and act upon in the most important of your own affairs. A defendant is not to be convicted on mere suspicion or conjecture.
>
> "A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt of every essential element of the crime charged, a defendant

has the right to rely upon a failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out on cross-examination of witnesses for the prosecution. The law does not impose upon a defendant the duty of producing any evidence.

"A reasonable doubt exists in any case when, after careful and impartial consideration of all the evidence, the jurors do not feel satisfied to a moral certainty that a defendant is guilty of the charge."

In addition to the foregoing, the Court's references to the doctrine of reasonable doubt in its instructions to the jury, which are referred to in Section 4(a) of this argument, above, adequately instructed the jury on the doctrine of reasonable doubt.

5(a)(b) There Is Substantial Evidence That a Report of Examination of the Broadway Federal Savings and Loan Association at the Close of Business March 8, 1949, Was Made to the Federal Home Loan Bank Board on or About March 22, 1949.

Defendant's arguments 5(a) and (b) on Count 24 are being answered jointly since each is based upon identical facts.

It is again pointed out that Count 24 charges that on or about *March 22, 1949,* appellant made and caused to be made a false entry in a report to the Federal Home Loan Bank Board, namely: an *affidavit of the president* of said association *attached to the report of examination* of said association as at the close of business *March 8, 1949.* It was not alleged that appellant had anything to do with the report proper, that is, with the report of examination itself. The charge is that the appellant made

an affidavit which was false and which affidavit was attached to the report of examination of the association. That affidavit asserts that all notes supporting assets on the association's books were in force and effect and that the signatures thereon were genuine.

An examination of Exhibit 24-B reveals that it is a certificate of the examiner in charge relative to the examination of the association as at the close of business on March 8, 1949, and that the examiner's certificate and the affidavit of the appellant, H. A. Howard, were executed on March 22, 1949.

The appellant admitted signing the affidavit [R. 403-404, 419] and that the examiner, Mr. Manley, was at the Broadway making the examination for ". . . between two and three weeks" [R. 420].

The testimony of Frank C. Noon clearly establishes that there was such a report of examination and that Exhibit 24-B was page 17 of that report. The pertinent testimony reads [R. 266, line 12, to 269, line 15]:

> "Q. By Mr. Rose: This is the last page of a report that was handed to your office by Orville M. Manley, Examiner, and I am referring to Plaintiff's Exhibit 24-B.
>
> Mr. Danielson: Government's Exhibit 24-B.
>
> Mr. Rose: I know you represent the government.
>
> The Witness: That is the certification that is attached to the copy of the report that went to the Chief Examiner in Washington.
>
> Q. By Mr. Rose: You have the rest of the report, or a copy of the rest of the report, in your office files, have you not? A. I have.

Q. As a matter of fact, this is page 17 of the report and it is so marked at the bottom of the page, is that true? A. That is correct.

Q. Could you produce tomorrow the other 16 pages that belong to that report? A. Yes.

Mr. Danielson: If your Honor please, we will object to that coming in at this time. Our indictment only charges a false affidavit and, frankly, I don't think the defendant—well, it would be error if the government tried to introduce the entire report. It would be hearsay as to this defendant.

The Court: How is the report going to affect this case, Mr. Rose?

Mr. Rose: Your Honor, I will show when this affidavit was signed, it was not part of any report of the government, it was not authorized to be a report to the Federal Home Loan Bank Board and Mr. Howard has never seen the report. How could he, under those circumstances, make a report to the Home Loan Bank Board?

The Court: If you want the report here for the purpose of establishing the fact that Mr. Howard has never seen it, I think maybe it is competent for that reason, but why have it here in the morning? You are not going to have Mr. Howard on the stand tomorrow.

Mr. Rose: I thought if there was evidence by any other witness, the examiner or possibly someone else, I would like to have that report in court to confront them with that.

Mr. Danielson: If your Honor please, that would be part of an affirmative defense, if anything.

The Court: That's right. You are anticipating a defense. I won't require this witness to bring in the report tomorrow, but if you want the report

when you present your testimony,I will be glad to have it here.

Mr. Rose: It is perfectly all right if he brings it next Monday.

Mr. Neukom: We will bring it then.

Mr. Rose: I want him to bring it, not you.

The Court: This witness will bring in the report any time you notify him. He is not going out of town, I don't suppose.

Q. By Mr. Rose: Is that correct? A. If so, it will be for a day or two.

Q. Could you bring it in next Monday then? A. I can bring it in any time.

Q. Will you bring it in Monday morning at 10:00 o'clock? A. Yes.

Mr. Rose: Thank you.

The Court: I don't know why you want him here Monday, because we won't be trying this case on Monday.

Mr. Rose: Tuesday, I mean, because the government will be through by Tuesday.

The Court: Tuesday, yes.

Q. By Mr. Ross: You don't know under what circumstances you received that last page over there, of your own knowledge, do you? A. Yes.

Q. Who handed that last page to you? A. I wrote to the Chief Supervisor in Washington in response to a subpoena and asked him to send it to me, and I received it in the mail.

Q. I know. Maybe my question wasn't clear. You don't know how that last page came into the hands of any government branch, do you? A. No.

Q. You don't know under what circumstances that signature of Mr. Howard, if it is Mr. Howard's

signature, came to be on that piece of paper? A. No, I have no personal knowledge of it."

Thus, it is apparent that the report in question did exist and that it was available to the appellant for use in the trial in the event he should have seen fit to use it.

In this connection, it is pointed out that Frank Noon received the report from the Chief Supervisor in Washington after he wrote to the Chief Supervisor and asked that it be sent to him. Noon then received it in the mail. It is settled that this is sufficient authentication of the document.

7 Wigmore, Sec. 2153;

Scofield, et al. v. Parlin & Orendorff Co. (7 Cir., 1894), 61 Fed. 804;

National Acc. Soc. v. Spiro (6 Cir., 1897), 78 Fed. 774.

5(c) and (e) There Is Substantial Evidence That Appellant's Affidavit Was Made With Intent to Deceive as Charged in Count 24 and That Appellant Knew That the Signature of Vashti Peake on Exhibit 24-A Was False and Forged.

Appellant's arguments 5(c) and (e) are being answered jointly since each is based upon the same facts.

Appellant argues that the evidence submitted in this connection pertains only to a trust deed attached to government's Exhibit 24-A and that it does not pertain to the note, which is the basis of the charge in Count 24 (A. B. 55 and 56).

The promissory note in question was identified by Margaret Russell, bookkeeper at the Broadway Federal Savings & Loan Association, and the note and deed were

identified as parts of loan No. 274 of the Broadway Federal Savings & Loan Association [R. 189, 193]. Vashti Peake Cottman was later shown the note and the trust deed, which were parts of the documents constituting loan No. 274, and she positively testified that the signature upon the *note* was not her signature and that the signature "Vashti Peake" on the deed was likewise not her signature [R. 196]. She likewise testified that she had never owned any real estate [R. 197] and that she had never borrowed or received any money from, or owed any money to, the Broadway Federal Savings & Loan Association [R. 198]. The note and the trust deed were admitted in evidence as one exhibit, Exhibit 24-A [R. 205].

Mildred P. Wilson testified that she had notarized the signature "Vashti Peake" on the deed of trust, which is a part of Exhibit 24-A, at the request of appellant H. A. Howard [R. 337-339; A. B. 26-27].

Frank C. Noon was shown Exhibit 24-A [R. 247, 248] and he then testified that he had questioned the appellant about the transaction known as Loan No. 274, of which this exhibit was a part, and that appellant had admitted to him that he was the owner of the property covered by that loan and that Vashti Peake was a "dummy" for him.

Thus, there was sufficient evidence to permit the jury to conclude that the appellant knew that the signature of Vashti Peake on the promissory note, Exhibit 24-A, was false and forged and that his affidavit was made with intent to deceive, as charged in the indictment.

5(d) No Argument Is Here Being Set Forth at This Point to Refute Appellant's Argument That the Federal Home Loan Bank Board Did Not Exist as of March 22, 1949. That Contention Has Been Covered Completely in the Argument on Count 24 Set Forth Under 1(b) at Page 20 Above.

In his closing pages appellant goes on to argue that the evidence upon which appellant was convicted of Count 24 consists of inferences drawn upon inferences. In reading appellant's argument it becomes immediately apparent that he has chosen to attribute all inferences to one and the same fact, whereas the three conclusions which he lists are all drawn from different facts.

As to the first "inference," there was a great deal of testimony, which is set forth above, to the effect that a report was made by an examiner of the Broadway Federal Savings and Loan Association, Orville M. Manley, and that Exhibit 24-B was the 17th and last page of that report.

As to the second "inference," appellant admitted his signature upon the affidavit, which affidavit is, itself, dated March 22, 1949. It is apparent that the jury chose to believe the document and other witnesses rather than the testimony of the appellant.

As to the third "inference," evidence justifying this conclusion is set forth in argument 5(c) and (e), above.

Conclusion.

The crimes here charged are making false entries in reports to a government agency. The statutes and regulations under which the prosecution was brought are sufficient. The evidence points conclusively to guilt. The judgment below should be affirmed.

Respectfully submitted,

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APPENDIX.

Statutes and Regulations Involved.

(a) Penal Statutes.

Section 1467(c) of Title 12, U. S. Code, a violation of which is charged in Count 22, provides:

"(c) Whoever, being connected in any capacity with the Board or the Home Owners' Loan Corporation or an association (1) embezzles, abstracts, purloins, or willfully misapplies any moneys, funds, securities, or other things of value, whether belonging to it or pledged or otherwise intrusted to it; or (2) with intent to defraud the Board or the Home Owners' Loan Corporation or an association, or any other body politic or corporate, or any individual, or to deceive any officer, auditor, or examiners of the Board or the Home Owners' Loan Corporation or an association, makes any false entry in any book, report, or statement of or to the Board or the Home Owners' Loan Corporation or an association, or, without being duly authorized, draws any order or issues, puts forth, or assigns any note, debenture, bond, or other obligation, or draft, mortgage, judgment, or decree thereof, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than five years, or both."

Count 24 charges a violation of 18 U. S. C. 1006, which provides:

"Federal credit institution entries, reports and transtions.

Whoever, being an officer, agent or employee of or connected in any capacity with the Reconstruction Finance

Corporation, Federal Deposit Insurance Corporation, Home Owners' Loan Corporation, Farm Credit Administration, Federal Housing Administration, Federal Farm Mortgage Corporation, Federal Crop Insurance Corporation, Farmers' Home Corporation, the Secretary of Agriculture acting through the Farmers' Home Administration, or any land bank, intermediate credit bank, bank for cooperatives or any lending, mortgage, insurance, credit or savings and loan corporation or association authorized or acting under the laws of the United States, with intent to defraud any such institution or any other company, body politic or corporate, or any individual, or to deceive any officer, auditor, examiner or agent of any such institution or of department or agency of the United States, makes any false entry in any book, report or statement of or to any such institution, or without being duly authorized, draws any order or bill of exchange, makes any acceptance or issues, puts forth or assigns any note, debenture, bond or other obligation, or draft, bill of exchange, mortgage, judgment, or decree, or, with intent to defraud the United States or any agency thereof, or any corporation, institution, or association referred to in this section, participates or shares in or receives directly or indirectly any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of any such corporation, institution, or association, shall be fined not more than $10,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 750, amended May 24, 1949, c. 139, §20, 63 Stat. 92."

(b) Other Statutory Provisions.

The First War Powers Act, 1941, 55 Stat. 838-841, provides in part:

"SEC. 2. That in carrying out the purposes of this title the President is authorized to utilize, coordinate, or consolidate any executive or administrative commissions, bureaus, agencies, governmental corporations, offices, or officers now existing by law, to transfer any duties or powers from one existing department, commission, bureau, agency, governmental corporation, office, or officer to another, to transfer the personnel thereof or any part of it either by detail or assignment, together with the whole or any part of the records and public property belonging thereto."

"SEC. 5. That all laws or parts of laws conflicting with the provisions of this title are to the extent of such conflict suspended while this title is in force.

"Upon the termination of this title all executive or administrative agencies, governmental corporations, departments, commissions, bureaus, offices, or officers shall exercise the same functions, duties, and powers as heretofore or as hereafter by law may be provided, any authorization of the President under this Title to the contrary notwithstanding."

The Reorganization Act of 1945, 59 Stat. 613 ff, 5 U. S. C. 133y to 133y-16 provides in part:

"SEC. 4. Any reorganization plan transmitted by the President under section 3—

(1) shall change, in such cases as he deems necessary, the name of any agency affected by a reorganization, and the title of its head; . . ."

"SEC. 8. For the purposes of this Act any transfer, consolidation, coordination, abolition, change or designation of name or title, . . . shall be deemed a 'reorganization.'"

"SEC. 9(a)(1). Any statute enacted, and any regulation or other action made, prescribed, issued, granted, or performed, in respect of or by any agency or function transferred to, or consolidated or coordinated with, any other agency or function under the provisions of this act, before the effective date of such transfer, consolidation, or coordination, shall, except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law, have the same effect as if such transfer, consolidation, or coordination had not been made; but where any such statute, regulation, or other action has vested functions in the agency from which the transfer is made under the plan, such functions shall, insofar as they are to be exercised after the transfer, be considered as vested in the agency to which the transfer is made under the plan.

(2) As used in paragraph (1) of this subsection the term 'regulation or other action' means any regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, designation, or other action."

Reorganization Plan No. 3 of 1947 (effective July 27, 1947), 61 Stat. 954-956, 12 F. R. 4981 ff, 3 CFR Ch. IV (1947 Ed.) 5 U. S. C. 133y-16, provides in part:

"SECTION 1. *Housing and Home Finance Agency.* The Home Owners' Loan Corporation, the Federal Savings and Loan Insurance Corporation, the Federal Housing Administration, the United States Housing Authority,

the Defense Homes Corporation, and the United States Housing Corporation, together with their respective functions, the functions of the Federal Home Loan Bank Board, and the other functions transferred by this Plan, are consolidated, subject to the provisions of sections 2 to 5, inclusive, hereof, into an agency which shall be known as the Housing and Home Finance Agency. There shall be in said Agency constituent agencies which shall be known as the Home Loan Bank Board, the Federal Housing Administration, and the Public Housing Administration.

"SEC. 2. *Home Loan Bank Board.* (a) The Home Loan Bank Board shall consist of three members appointed by the President by and with the advice and consent of the Senate . . ."

"(c) Except as otherwise provided in subsection (b) of this section there are transferred to the Home Loan Bank Board the functions (1) of the Federal Home Loan Bank Board; (2) of the Board of Directors of the Home Owners' Loan Corporation; (3) of the Board of Trustees of the Federal Savings and Loan Insurance Corporation; (4) of any member or members of any of said Boards, and (5) with respect to the dissolution of the United States Housing Corporation."

"SEC. 9. *Abolitions.* The Federal Home Loan Bank Board, the Board of Directors of the Home Owners' Loan Corporation, and the Board of Trustees of the Federal Savings and Loan Insurance Corporation, together with the offices of the members of said boards, the office of Federal Housing Administrator, and the office of Administrator of the United States Housing Authority, are abolished."

(c) Regulations.

Regulations governing the Federal Home Loan Bank Board have been duly promulgated and published. From time to time some of them have been changed and others have remained unchanged. Pertinent regulations are here set forth, with changes as indicated:

(1) Definitions.

"The term 'Act' means the Federal Home Loan Bank Act as amended." 24 CFR 1.1 (1939 Ed.).

"Bank. The term 'Bank' Means a Federal home loan bank established by the Board under the authority of the Act." 24 CFR 1.2 (1939 Ed.).

The two above sections remain the same today.

"The term 'Board' means the Federal Home Loan Bank Board." 24 CFR 1.3 (1939 Ed.).

The above section was changed by Resolution #1285, December 17, 1948, 13 F. R. 8266, to read:

"The term 'Board' means the Home Loan Bank Board or one or more of its officials who has been duly authorized by the Home Loan Bank Board to act in its behalf." 24 CFR 121.3 (1949 Ed.).

(2) Other Regulations.

Pursuant to the authority granted in the First War Powers Act, 1941, the President, on February 24, 1942, issued Executive Order No. 9070, 7 FR 1529, 50 U. S. C. App. 601 (note), which provides in part as follows:

"1. The following agencies, functions, duties, and powers are consolidated into a National Housing Agency

and shall be administered as hereinafter provided under the direction and supervision of a National Housing Administrator:

* * * * * * *

(b) All functions, powers, and duties of the Federal Home Loan Bank Board and of its members.

* * * * * * *

3. There shall be three main constituent units in the National Housing Agency. Each such unit shall be administered by a commissioner acting under the direction and supervision of the National Housing Administrator. . . . *The unit administering the functions, powers, and duties of the Federal Home Loan Bank Board and its members shall be known as the Federal Home Loan Bank Administration, and the Chairman of the Federal Home Loan Bank Board shall serve as the Federal Home Loan Bank Commissioner.* . . ." (Emphasis added.)

Under the rules and regulations of the Federal Home Loan Bank Administration, the officers of the Federal Home Loan Banks were agents of the Federal Home Loan Bank Administration under some circumstances as delineated by the following regulations:

"PART 2—ORGANIZATION OF THE BANKS.

1. . . .

(b) *Duties of officers*— . . .

(3) *Officers as agents.* For the following purposes, the officers of a Bank, . . . shall be the agents of the Federal Home Loan Bank Administration, (and) the Federal Savings and Loan Insurance Corporation. . . .

It shall be the specific duty of such agents to give consideration to . . . insurance of accounts by the Federal Savings and Loan Insurance Corporation, and investments by the Home Owners' Loan Corporation in savings and loan associations. Such agents shall transmit to the Federal Home Loan Bank Administration's district examiner, together with their comments and recommendations thereon, applications for conversion, insurance, and for investments by the Home Owners' Loan Corporation in savings and loan associations, . . . An agent shall forward, when requested by the Governor, advise of action taken by the Federal Home Loan Bank Administration, . . . upon applications, and instructions and other communications from the Federal Home Loan Bank Administration, . . . to the applicant or institution." 8 FR 1431; 24 CFR Cum. Sup. 2.5 (1944 Ed.); 24 CFR 101.10.

(4) *President as agent.* For the following purposes, the President of each Bank shall be the agent of the Federal Home Loan Bank Administration and the Federal Savings and Loan Insurance Corporation.

* * * * * * *

Said agent shall represent the Federal Home Loan Bank Administration and the Federal Savings and Loan Insurance Corporation in supervising Federal savings and loan associations . . . in the Bank's district. . . . When, in his opinion, such action should be taken, he shall advise and endeavor to assist Federal savings and loan associations . . . to conduct their operations in conformity with the statutes and the rules and regulations governing them. . . . He shall see that all Federal savings and loan associations . . . in his Bank district

submit to him for his consideration such matters as budgets, . . . and such other similar matters as are required to be approved by the Federal Home Loan Bank Administration or by the Federal Savings and Loan Insurance Corporation under the statutes and rules and regulations. When these matters come to the attention of said agent he shall . . . submit them, with his recommendations thereon, to the Governor for such action as he may deem appropriate. After the issuance by the Federal Home Loan Bank administration of a charter for a Federal savings and loan association, said agent shall . . . require the association to comply with the laws, the rules and regulations made thereunder, and such other requirements as may be applicable thereto. . . ." 8 Federal Register 1431, Feb. 3, 1943, 24 CFR Cum. Supp. 2.5; 24 CFR 101.11.

Other regulations pertinent to this case are:

"Forms and reports. Every Federal association shall use such forms . . . as may, from time to time, be prescribed by the Board. . . . The officers of each association shall make a monthly report to the association's board of directors on forms prescribed by the Board which shall be filed as follows: One copy shall be forwarded to the Federal Home Loan Bank of which the association is a member and two copies to the Governor of the Federal Home Loan Bank System, Washington, D. C." 24 CFR 143.5.

"Part 6—Federal Home Loan Bank Board.

(a) *Governor, Federal Home Loan Bank System.* The Governor of the Federal Home Loan Bank System shall be the chief administrative officer under the Federal Home

Loan Bank Commissioner and shall be directly responsible to the Federal Home Loan Bank Administration. . . . The Governor shall be responsible for such supervision of all Federal savings and loan associations as is provided by the statute and regulations made thereunder. . . . Such supervision shall be accomplished through such staff as may be necessary in Washington, D. C., and in the field through the agents of the Federal Home Loan Bank Administration and the Federal Savings and Loan Insurance Corporation." 8 F. R. 1431, Feb. 3, 1943; 24 CFR Cum. Supp. 6.2.

"PART 7—*Supervision.*

". . . The Federal Home Loan Bank Administration and the Federal Savings and Loan Insurance Corporation shall have original authority in the exercise of the supervisory powers granted to them by law. . . . supervision of all Federal savings and loan associations, . . . shall be under the direction of the Governor and shall be administered by him through such staff of employees as may be necessary and through the agents of the Federal Home Loan Bank Administration and the Federal Savings and Loan Insurance Corporation." 8 F. R. 1431, Feb. 3, 1943; 24 CFR Cum. Supp. 7.1.

[The regulation was later modified to provide for a Chief Supervisor, Federal Home Loan Bank System.]

"(e) *Chief Supervisor.* The Chief Supervisor shall be responsible, under the direction of the Governor for such purpose, for the appropriate supervision of all member institutions. The Chief Supervisor shall also perform such other duties as may be assigned to him by the Governor." 8 Federal Register 9865, July 17, 1943, 24 CFR 1943 Supp. 6.2.